



RECEIVED

MAY -6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 10, 1996

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554
Attention: Rosalee Chiara

DOCKET FILE COPY ORIGINAL

Re: Telecommunications Act of 1996:
Proposed Rule Regarding Non-Governmental
Restrictions on Receipt by Individuals of
Video Programming Services
IB Docket #95-59

No. of Copies rec'd ct 3
List ABCDE

Dear Ms. Chiara:

This letter is meant to voice our community's strong objection to the proposed FCC rule that was promulgated on March 11, 1996 as a result of the Telecommunication Act of 1996 ("Act").

The proposed rule that we are concerned with states:

"No restrictive covenant, encumbrance, homeowners association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter."

We are members of a community association of homeowners that share common facilities and pay common expenses for the upkeep, maintenance and administration of our association. The restrictive covenants of our association were recorded at the time the community was created and before the owner agreed to abide by the covenants of our community. By virtue of the covenants, the owners purchased their homes with the understanding that their freedom of choice in the use of their home was not absolute but was subject to the restrictions contained in the covenants.

Part of the responsibility of our association, through its Board of Trustees, is to ensure that any changes that alter the exterior appearance of the community are pre-approved by the association. This authority and responsibility was legislatively confirmed by the Commonwealth of Virginia in Section 55-513 of the Virginia Property Owners Associations Act which governs

all residential homes in Virginia.

Our association exercises its responsibilities with regard to exterior modifications carefully but with appropriate flexibility. We strive to avoid absolute prohibitions on proposed changes and focus on the visual and structural impact of the proposed change. We try to work with the homeowner to get their proposed changes approved by suggesting alternatives in location or design that will balance the owner's wishes with the expectations of the association.

We believe that the proposed rule should be reviewed in light of the foregoing. We would also note the following:

1. Preemption- The Act was not intended to empower the FCC to regulate or preempt private restrictive covenants or agreements. There is no difference between the satellite antennae and other radio antenna. However, the longstanding (and correct) policy of the FCC has been that private restrictive covenants are not forced on individuals, as ordinances are, but are entered into freely by the user when he or she decides to reside in that community. Accordingly, we would urge the FCC to restrict its rule to municipalities and other "non-voluntary" governmental groups.

2. Size, Location and Appearance- Even if restrictive covenants were preempted by the Act, we would urge the FCC to acknowledge the difference between private and public restrictions and to afford greater leeway to private community associations to control the size, location and appearance of satellite receptors. As we hope you can appreciate, the unregulated placement of satellite dishes (even at a minimum of one meter in diameter) could result in an aesthetically jumbled mix of antennae negatively affecting the exterior appearance (and values) of homes in the community.

3. Common Areas vs. Lots- The rule should be amended to expressly clarify that the rule does not allow alterations to the common areas of community associations. The common areas, as opposed to the individual lots, are owned in common by all the owners.

4. Grandfathering- At the very least we would suggest that the Secretary consider revising the rule to grandfather existing communities by restricting the applicability of the rule to new communities that have not been created. This would allow the developers of the communities to accommodate such uses in the design of the community. The rule could require that the proposed covenants would have to comply with specific standards if the association's wished to regulate satellite antenna installation. At the same time, the rule would not invalidate existing private contractual arrangements (covenants).

Office of the Secretary
Federal Communications Commission
April 10, 1996
Page 3

We hope that your office will consider these comments carefully and will either revoke the proposed rule or modify the same. If we could offer any practical insight, please let us know.

Sincerely,

A handwritten signature in cursive script, reading "Tim Sargeant".

Tim Sargeant, President
Crosspointe Board of Trustees

cc: The Honorable John Warner, U.S. Senate
The Honorable Charles Robb, U.S. Senate
The Honorable Tom Davis, House of Representatives
The Honorable Jim Moran, House of Representatives
Crosspointe Board of Trustees